

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-057

RITA J. EWASHKO

APPELLANT

VS. **FINAL ORDER  
SUSTAINING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
DR. CARL ROLLINS, APPOINTING AUTHORITY

APPELLEE

\*\* \*\* \*

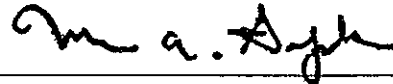
The Board at its regular October 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 26, 2015, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 14<sup>th</sup> day of October, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Melissa Justice  
Rita J. Ewashko

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-057**

**RITA J. EWASHKO**

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**VS.                      FINDINGS OF FACT, CONCLUSION OF LAW  
AND RECOMMENDED ORDER**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY,  
DR. CARL ROLLINS, APPOINTING AUTHORITY**

**APPELLEE**

\* \* \* \* \*

This matter came on for a pre-hearing conference on May 13, 2015, at 10:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Rita J. Ewashko, was present and was not represented by legal counsel. The Appellee, Kentucky Higher Education Assistance Authority, was present and represented by the Hon. Melissa Justice, appearing by telephone.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

The Hearing Officer notes this appeal was filed with the Personnel Board on March 18, 2015. The Appellant indicated she was appealing dismissal and also noted, under Other Penalization, "Verbal abuse by co-worker led to being overwhelmed daily - scattered & upset then blood pressure issues that I never had before."

Appellant indicated she had been terminated from her position on or about March 10, 2015, subsequent to what Appellant termed in the attachments to her appeal as verbal abuse, harassment and a working environment that was less than ideal. As relief, Appellant would seek to be reinstated, or at least ensure that what she endured no one else at the agency would have to endure (as was detailed in the attachments to her appeal.)

Counsel for the agency was not present initially, but was contacted by telephone during the course of the pre-hearing conference. Counsel affirmed she was intending to file a Motion to Dismiss, questioning whether the Personnel Board had jurisdiction to consider this matter. A briefing schedule was set, and a tentative hearing date was set should the matter survive the Appellee's challenge to the jurisdiction of the Personnel Board.

Subsequent to the pre-hearing conference held on May 13, 2015, the Appellee filed a Motion to Dismiss. Upon Order from the Hearing Office, the Appellee filed a Renewed Motion to Dismiss. The Hearing Officer would note Appellant was given ample time to have responded to either the original Motion to Dismiss or the Renewed Motion to Dismiss, and did not do so at either instance. The matter is submitted to the Hearing Officer for a ruling on the Motion to Dismiss and Renewed Motion to Dismiss.

### **BACKGROUND**

1. During the relevant times, the Appellant, Rita J. Ewashko, was an employee of the Kentucky Higher Education Student Loan Corporation (KHESLC).

2. In its Motion to Dismiss and Renewed Motion to Dismiss, the Appellee, through Counsel, contends that Appellant has no right of appeal to the Personnel Board for having been terminated from her position with KHESLC, as the KHESLC does not employ persons pursuant to KRS Chapter 18A, and in fact, is an "independent *de jure* municipal corporation and political subdivision" of the Commonwealth pursuant to KRS Chapter 164A. In the Renewed Motion to Dismiss, Counsel contends that pursuant to KRS 164A.011, KHESLC was required by the General Assembly to submit proposals for its own personnel system apart from that of KRS Chapter 18A, and it did so. Counsel contends that Appellant has been fully informed of the fact that the position she was being offered was not a "merit" position, but would be considered "at will."

3. As noted, though given ample opportunity in which to have responded at either time, the Appellant did not file a response to either the Motion to Dismiss or Renewed Motion to Dismiss.

4. KRS 18A.095(18)(a) states:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks

jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

### **FINDINGS OF FACT**

1. During the relevant times, the Appellant, Rita J. Ewashko, was an employee of the Kentucky Higher Education Student Loan Corporation (KHESLC).

2. The Hearing Officer finds that the Appellant was never employed pursuant to KRS Chapter 18A by KHESLC. This is demonstrated by the un rebutted documents attached to the Appellee's Motion to Dismiss.

3. The Hearing Officer also takes administrative notice that pursuant to the statute organizing KHESLC, there is no specific requirement that the personnel system be organized pursuant to KRS Chapter 18A, and in fact, based on the un rebutted documents filed with the Appellee's Motion to Dismiss, the KHESLC personnel system does not follow KRS Chapter 18A.

### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that the Personnel Board does not have jurisdiction to consider this appeal, as Appellant was an employee of KHESLC, which is not a state agency required to follow the mandates of KRS Chapter 18A. The Hearing Officer further finds that pursuant to KRS 18A.095(18)(a), the Personnel Board has no jurisdiction to further consider this appeal and this matter should be dismissed.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **RITA J. EWASHKO V. KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**, (APPEAL NO. 2015-057) be **DISMISSED**.

### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will

result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

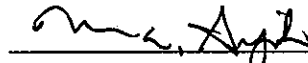
**Any document filed with the Personnel Board shall be served on the opposing party.**

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of Hearing Officer Boyce A. Crocker this 26<sup>th</sup> day of August, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPER  
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Melissa Justice  
Ms. Rita J. Ewashko